



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/726,470	11/29/2000	Daniella I. Zheleva	CCI-014	1635
959	7590	05/16/2006	EXAMINER	
LAHIVE & COCKFIELD 28 STATE STREET BOSTON, MA 02109			CHISM, BILLY D	
			ART UNIT	PAPER NUMBER
			1654	

DATE MAILED: 05/16/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/726,470	Applicant(s) ZHELEVA ET AL.	
	Examiner B. Dell Chism	Art Unit 1654	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 February 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 16-25, 36, 41-47 and 55-84 is/are pending in the application.
- 4a) Of the above claim(s) 17-25, 36, 41-47 and 55-84 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 19 and 20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This is a non-final office action. Claims 16-25, 36, 41-47 and 55-84 are pending.
2. The Examiner would like to clarify for the record that the telephonic interview with Applicants' representative did not result in a decision on the part of the Examiner or the Office, that the withdrawal of allowed claims in the *vacated* Notice of Allowance was improper. The Examiner could not answer the Representative's questions at the time of the interview and the Examiner stated that the reasons for withdrawal would be reviewed upon filing of a response. The allowance of the application was withdrawn from issue due to an improper allowance of the claims. Therefore, the claims were not allowable. Since the claims were not allowable, the claims were treated as if they were in the same status or under the same considerations as prior to the improper allowance.
3. As stated in the previous office action dated 19 October 2005, the species of SEQ ID NO: 35 is free of the prior art. With the finding of a species free of the art, the Examiner moved on to an additional species encompassed by the generic claims. If the next species is found free of the art, it will be noted of record as such, and wherein there exists a claim(s) specific to that species and not generic to other species, that claim(s) will also be noted as free of the prior art for allowance purposes; however, if the next species is found to be taught in the prior art, then all claims not pertaining to that species will be withdrawn from consideration and *only* those claims that read upon the species found in the prior art will be considered. Under these criteria and as prosecuted below, claims 16 and 20 are under consideration as pertaining to species found in the prior art. However, claims 17-25, 36, 41-47 and 55-84 are withdrawn from consideration, as these claims do not read upon the species found in the prior art.

Art Unit: 1654

Claim Objections

4. (New) Claim 20 is objected to because of the following informalities: claim 20 requires the term --or-- to be inserted between limitations (d) and (e) to demonstrate the alternative.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. (New) Claim 20 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 20 is indefinite wherein it is unclear as to whether (a)-(e) have occurred or will occur to SEQ ID NO: 2, and if it will occur, it is unclear if (a)-(e) is a product limitation or method steps.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. (New) Claims 16 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by WO 96/01329 ('1329). The '1329 reference teaches in Figure 4A the peptide CSF A10 of the

Art Unit: 1654

sequence DSTRALYF. This sequence meets the limitations of the rejected claims. X1, X3, X4 and X5 are each a natural amino acid and X2 is serine.

Conclusion

9. No claims are allowed.
10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to B. Dell Chism, whose telephone number is (571) 272-0962. The examiner can normally be reached on M-F 08:30 AM - 5:00 PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bruce Campell, PhD can be reached on (571) 272-0974.

The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

BDC


**B. DELL CHISM
PATENT EXAMINER**